IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6420 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KESAR RAMAJOR YADAV

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

RULE SERVED BY DS for Respondent No. 2

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 01/09/2000

ORAL JUDGEMENT

#. This petition is filed under Article 226 of the Constitution of India praying therein to quash and set

aside the order of detention passed by the learned District Magistrate, Vadodara against the present petitioner.

#. The petitioner at present is in detention. Under the impugned order dated 13.6.2000 the Detaining Authority and the District Magistrate, Vadodara passed the order of detention in purported exercise of the powers conferred under subsection 2 of section 3 of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act" for short).

#. According to the petitioner, the order of detention is illegal, invalid and arbitrary and the same is passed without application of mind, and therefore, the same should be quashed and set aside. The petitioner has specifically pleaded that the order is violative of Article 22(5) of the Constitution of India and therefore the same cannot be sustained.

#. According to the Detaining Authority the petitioner is involved in the activities which may adversely affect the smooth supply of essential commodity known as petroleum solvent.

#. I have gone through the order of detention. Learned senior counsel Mr.Y.N.Oza appearing for the petitioner has submitted that though the petitioner has challenged the order of detention on various grounds, he would opt to press in service only one ground and he may not press other grounds if the court is satisfied that the order of detention is passed on the grounds mentioned in sub-para (m) of para 4 of the petition. For sake of brevity, I would like to mention the ground (m) which is at page 10 of the petition.

"(m) The petitioner respectfully states that in connection with the offence registered as C.R. No.22/2000 with Bhadarava Police Station the petitioner was arrested on 21.5.2000. The petitioner was taken on remand by the order dated 22.5.2000 passed by the Judicial Magistrate, First Class, Savli. The petitioner was sent in judicial custody on 1.6.2000. The bail application was preferred on 7.6.2000 before the Special and Sessions Judge, Vadodara. The petitioner submits that bail application of the petitioner was rejected by the learned Judge on 13.6.2000. Annexed hereto and marked as ANNEXURE `E' is a copy of the order dated 13.6.2000.

However, while passing order of detention the detaining authority was not aware about the fact that the petitioner is in judicial custody. This reflects total non application of mind on the part of the detaining authority. Therefore, the subjective satisfaction of the detaining authority gets vitiated."

#. Mr.Oza argued that the order passed by the Detaining Authority reflects total non-application of mind. Because of the alleged violation of the provisions of the Act, the Directors of the concerned companies dealing in petroleum solvent were described as accused in the criminal case registered vide CR No.22/2000 with Bhadarava Police Station and the petitioner was arrested during the course of investigation and now the police has chargesheeted the petitioner for his so called involvement in the alleged crime. Mr.Oza has pointed out that the petitioner was arrested for the alleged offence on 21.5.2000 and the order of detention undisputedly is dated 13.6.2000. So, on the date on which the order of detention was passed, the petitioner was in judicial custody and was already under confinement. So, there was no need to pass the order of detention.

#. Mr.Oza has rightly submitted that the District Magistrate was authorised to pass the order of detention. In a given case, here the detenu is in judicial custody or in any other confinement, but the Detaining Authority must assign the reasons as to why he again passed the order of detention though the detenu is otherwise in confinement or judicial custody. In the case in hand, learned District Magistrate has not even referred the arrest of the present petitioner nor he has observed in the order that the petitioner is likely to enlarge on bail. There is no reference in the order passed by the Detaining Authority that the petitioner is already arrested for the very wrong done by him and he is in judicial custody. So, it should be held that the order passed by the Detaining Authority is without application of mind.

#. Mr.Oza has placed reliance on the judgment delivered in the matter of Ravubha Pratapsinh Jadeja Vs. K.N.Bhatt, reported in 1999(1) GLH 594 (Coram: D.C.Srivastava,J) wherein this court has observed that, disclosure that the person was in judicial custody must be reflected in the grounds of detention and not in the subsequent counter-affidavit filed at the time of hearing of the writ petition challenging the detention order is not the compliance. The learned Judge in this case has

referred the verdict of the Apex Court given in the case of Abdul Sathar Vs. Union of India, reported in AIR 1991 SC 2261. I would like to refer certain portion of the judgment rendered in the case of Abdul Sathar (Supra) which clinches the issue.

"From the catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition to question it before a higher Court".

Having regard to the various abovecited decisions on the points often raised we find it appropriate to set down our conclusions as under.:

(1) A detention order can validly be passed even in the case of a person who is already in custody. In such a case, it must appear from the grounds that the authority was aware that the detenu was already in custody.

(2) When such awareness is there then it should further appear from the grounds that there was enough material necessitating the detention of the person in custody. This aspect depends upon various considerations and facts and circumstances of each case. If there is a possibility of his being released and on being so released he is likely to indulge in prejudicial activity then that would be one such compelling necessity to pass the detention order. The order cannot be quashed on the ground that the proper course for the authority was to oppose the bail and that if bail is granted notwithstanding such opposition the same can be questioned before a

higher Court.

(3) If the detenu has moved for bail then the application and the order thereon refusing bail even if not placed before the detaining authority it does not amount to suppression of relevant material. The question of nonapplication of mind and satisfaction being impaired does not arise as long as the detaining authority was aware of the fact that the detenu was in actual custody.

(4) xxxxxx xxxxxxx xxxxxx

(5) xxxxxx xxxxxxx xxxxxx

(6) xxxxxx xxxxxxx xxxxxx

#. The affidavits filed by the Deputy Secretary of State of Gujarat and the Under Secretary of the Department of Consumer Affairs, Ministry of Consumer Affairs and Public Distribution, New Delhi do not assail the ground (m) agitated by the present petitioner and I am not incline to accept the argument of the learned AGP Mr.Jani that the complaint was initially filed against the Directors of the Company and not against the present petitioner and the arrest of the present petitioner by the Investigating Officer during the course of investigation cannot be taken as relevant aspect as name of the present petitioner was not reflected in FIR lodged against the Company. This submission being not relevant and it is not the reply of the above referred settled legal position is not accepted.

##. Ms.Davawala, learned counsel appearing for the Union of India has tendered on record the counter affidavit and she has noting to add as the grievances raised by the petitiner in this petition are mainly against the State of Gujarat and the Detaining Authority.

##. In nutshell , the petitioner can succeed and I am incline to allow the petition on the very ground without going into the merits of other gorunds pleaded by the petitioner. The petition shall have to be allowed, therefore, the same is allowed. Impugned order of detention dated 13.6.2000 passed by the Detaining Authority is quashed and set aside. The petitioner should be set forth at liberty forthwith if he is not required otherwise.

(C.K.Buch,J)

(pathan)